Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

Brian Kilcullen

Petitioner

v.

Guy Lewis, et al.

Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The underlying impetus for this equitable pursuit, is a convoluted and well-executed fraud scheme, hatched and perpetrated by federal officials, whom have available to them, the powers of seizure, afforded law-enforcement.

In this instant case, they have either, created a new constitutional tort or uncovered a constitutional flaw within the applicable statutes and capitalized on it, to effect unlawful and unconstitutional torts, against a known innocent victim.

The unjust and constitutionally prejudiced positions resulting, mandate an opinion at to equitable matters, which may have never heretofore, been placed before this court.

These are the questions which I believe appropriate, but due to my inexperience in the law, caution this Court, to look to the body of this Writ as well, for any questions which may be more to the point or inferred.

Statutory:

1.) The asset forfeiture powers, afforded federal law-enforcement, pursuant to 21 U.S.C. 841, 846, 848 & 963 are unconstitutionally inadequate, in their application, when deliberately utilized to effect a taking of private property, when it is known to the government, that said innocent owner, may not be able to prove, with the preponderance of evidence required, their property interest. I.e. when said transfer of ownership is deliberately and purposefully concealed, for the purpose of seizure or re-seizure, the "Innocent Owner's Defense" 18 U.S.C. 983(d) does not provide for any procedural due process, which would permit an owner, whom is excusably ignorant of the misuse of these statutes, to assert his Innocent Owner Status. Thereby, creating a 4th Amendment violation and 5th

Amendment Due Process deprivation anomaly, which leaves said owner no adequate remedy at law.

or

Constitutional Tort:

2.) In cases where "Innocent Owners" are excusably without the requisite documentation or proof, pursuant to 18 U.S.C. 983 (d)(6)(A), Federal law-enforcement officials (agents & prosecutors) have joined forces to enact unlawful and unconstitutional seizures of private property, which is known to them, to either, have been seized/forfeited previously or not subject to seizure at all, thereby, effecting a taking of property, in such a manner, as to place the innocent victim in a constitutionally prejudiced anomaly. Subjecting said victim, to criminal accusations and civil forfeiture proceedings, of which they were not a part of and unable to overcome, due to the principle of Res Judicata. Effecting a 4th Amendment violation and 5th Amendment deprivation in one fell swoop. A constitutional tort, not envisioned or adequately protected against, in the judiciary.

Equity:

3.) Where a corporate entity, has suffered the loss of representation, due to financial constraints, proximate to the improper conduct of an adversary and/or adversary's counsel, in litigation, said corporate owners, in their individual capacity, if unable to retain future counsel, due to said monetary losses, attributed to said improper conduct, should be permitted to appear in federal court, *pro se*, in any equitable action, pursuant to Rule 60(b), to remedy that tort/conduct alleged, to have occurred.

Equity:

4.) No equitable action, pursuant to Rule 60(b)(3) of the Federal Rules of Civil Procedure, alleging a violation of a constitutionally protected Right, should be dismissed, until such time as the plaintiff has been afforded a Full and Fair Hearing (5th Amendment Due Process) into the conduct alleged to have occurred.

5.) Courts:

All courts, whereupon, any party or litigant, whom is or has been before it, where violations of professional conduct and/or the rules of the court are alleged to have occurred, should be mandated to hold an evidentiary hearing, pursuant to Rule 11(b) of the Federal Rules of Civil Procedure accordingly.

PARTIES TO PROCEEDINGS

Guy Lewis: (Defendant)	Former US Attorney Southern District of Florida
Terrence Thompson: (Defendant)	Assistant US Attorney/Prosecutor Southern District of Florida
Laurie Rucoba: (Defendant)	Assistant US Attorney/Prosecutor Southern District of Florida
Howard Weintraub: (Defendant)	Special Agent - US Customs (Retired)
John Devaney: (Defendant)	Special Agent in Charge - DHS Ft. Lauderdale
Michael Consavage: (Defendant)	Special Agent - US Customs (Retired)
Michael Palmer: (Defendant)	Special Agent - US Customs (Retired)
EG&G, Inc.: (Defendant)	Former Parent corporation of EG&G Technical Services, Inc.
EG&G Technical Services, Inc.: (Defendant)	Formerly known as EG&G Dynatrend, Inc.
George Melton: (Defendant)	President/CEO of EG&G Technical Services, Inc.
Jerry Hawkins: (Defendant)	Employee of EG&G Technical Services, Inc.

John Dent: (Defendant)	Former employee of EG&G Dynatrend, Inc.
Roy Butler Sr.: (Defendant)	President - Capitol Beverage Co.
Roy Butler Jr.: (Defendant)	Employee of Capitol Beverage Co.
Patrick Holmes: (Defendant)	Employee of Capitol Beverage Co.
Brian Kilcullen: (Plaintiff)	President of SkyKnight Air Services, Inc.
SkyKnight Air Services, Inc.: (Plaintiff)	Administratively closed at this time.

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TABLE OF CITED AUTHORITIES

Bivens v. Six Unnamed Federal Narcotics Agents 477 U.S. 368 (1970)

Christopher v. Harbury 122 S.Ct. 2179, 2185 (2002)

Franks v Deleware 438 U.S. 154, 98 S.Ct.2674 (1978)

Fuentes v. Shevin 407 U.S. 67, 86, 92 S.Ct. 1983, 1997 (1972)

Hampton v. Hanrahan F2d. 600, 620-621 (7th Cir. 1979)

Hickman v. Taylor 329 U.S. 495, 507 (1947)

Olim v. Wakinekona 461 U.S. 253, 103 S.Ct. 1741, 1748 (1983)

Perry v. Sindermann 408 U.S. 593, 601, 92 S.Ct. 2694, 2699 (1972)

U.S. v. Gonzalez 921 F.2d 1530, 1540

U.S. v. Valera 845 F.2d 923, 929 (11th Cir. 1988)

Wood v. Carpenter
(1979) 101 U.S. (11 otto) 135, 143, 25 L.Ed. 807

STATEMENT OF JURISDICTION

The District Court, in which this equitable action was filed, dismissed this case with prejudice, on March 19th, 2003.

The affirmation of the District Court's Final Order for Dismissal (B-1), by the 11th Circuit Court of Appeals on November 5th, 2003 (A-1), prompted a Motion for Reconsideration En Banc, by the Appellant, on December 22nd, 2003. The 11th Circuit denied said Motion for Reconsideration on January 28th, 2004 (A-3) and entered the Court's opinion as mandate on February 5th, 2004. (A-4)

Plaintiff, Brian Kilcullen, sought and received an extension of time, with which to file this Writ for Certiorari, on May 5th, 2004. Permitting the filing of this Writ on or before June 4th, 2004.

The appellate basis for jurisdiction in this Writ is believed found in 28 U.S.C. 1254 (1).

The Appellant, not learned in the law, requests that this Court consider this Petition be considered for the extraordinary Writs of Mandamus, as well. As, the refusals of federal law-enforcement officials/agencies to prosecute their respective duties and responsibilities, and the refusals of the inferior court(s) to discipline those attorneys, whom have and are perpetrating fraud before them and conduct themselves in accordance with the rules, as set down by the judiciary, are a contributing factor to the deprivation of a constitutional Right and, more importantly, to the dereliction of duty on the part of federal law-enforcement agencies, evidenced within this complaint.

CONSTITUTIONAL PROVISIONS, STATUTES & REGULATIONS

The 4th Amendment of the United States Constitution, for the Right to be free from search and/or seizure of personal papers and property, without probable cause.

The 5th Amendment of the United States Constitution, for the Right to Due Process of Law, when subjected to the invasion of one's constitutionally protected Rights. (Full & Fair Hearing)

18 U.S.C. 1962 RICO

21 U.S.C. 841, 846, 848, 881, 981 &983

Federal Rules of Civil Procedure - Rule 11 (b) 1,3,4 (c)
Federal Rules of Civil Procedure - Rule 26 (d)(f)

American Bar Association ABA 3.3 & Florida Rules for Professional Conduct FL-R 4-3.3(a)(b)(c)(d) Candor Toward the Tribunal

American Bar Association ABA 3.4 & Florida Rules for Professional Conduct FL-R 4-3.4 (a)(b)(c)(d)(f)(g)(h) Fairness to Opposing Party and Counsel

American Bar Association ABA 3.8 & Florida Rules for Professional Conduct FL-R 4-3.8(a) Special Responsibilities of a Prosecutor

American Bar Association ABA 4.1 & Florida Rules for Professional Conduct FL-R 4-4.1 (a)(b) Truthfulness in Statements to Others

American Bar Association ABA 8.4 & Florida Rules for Professional Conduct FL-R 4-8.4 (a)(b)(c)(d)(f) Misconduct

STATEMENT OF THE CASE

My name is Brian Kilcullen. I, at all relevant times to this subject matter, have resided at 1208 Seminole Drive, Ft. Lauderdale, Florida. I am an expert in the buying, selling, inspecting, operating and flying of general aviation aircraft.

The following, is an account of what I experienced and witnessed, having attended a United States Department of the Treasury seized asset auction in 1997.

In March/April of 1997, I, Brian Kilcullen, did read in the international aircraft trade publication, "Trade-A-Plane", that the Department of the Treasury/US Customs Service, was going to auction an aircraft. This advertising stated that there were "No Logbooks Available" and implied that certain avionics (aircraft radios) were missing. Said advertisement stated that the showings and auction were to be conducted by EG&G Dynatrend, Inc., the contractor for the Treasury Department.

I attended both indicated showings (April 21st & 28th, 1997) and upon signing in, was permitted limited access to the aircraft, N802ME and inventory. The aircraft exhibited a number of missing avionics, but there were a considerable number of avionics evident. A small flight case and box (1) constituted the inventory for this aircraft, which contained old work-orders, invoices and two (2) out-of-date engine logbooks. Purportedly, for this aircraft's engines.

I inquired and witnessed a number of other prospective buyers inquire, as to the missing logbooks (current airframe, engine & propeller logbooks) and missing avionics. The 3 - 5 US Customs and EG&G Dynatrend, Inc. personnel, whom surrounded the aircraft and inventory at all times, responded with, "What you see, is what you get!" and/or "Perhaps an avionics shop, that may have been working on the aircraft prior to seizure, has them." When I and others requested permission

to open panels and/or conduct other cursory inspections, commensurate with a purchase of an aircraft, such as this, we were told flatly, "No."

Having done due diligence and determining that the purchase of this aircraft, for the right price, could be profitable, I attended the advertised auction, on April 30th, 1997.

I was successful in outbidding all other participants, winning the high bid, at $365,000.00. When, I paid the balance for the aircraft, at a later date, I was told that there were 10 - 11 large boxes of inventory, which would accompany the aircraft. I inquired, as to why they were not displayed with the aircraft at showing and was told that it was of no consequence, as I was the rightful owner of the aircraft, N802ME and it's inventory.

Upon receipt of these boxes, by EG&G Dynatrend, Inc. employee, John Dent, at the instruction of employee, Jerry Hawkins, I asked what they contained. John Dent replied, "I definitively do not know what they contain!" On return to my home in Ft. Lauderdale, I discovered the boxes contained, all logbooks, those represented and those missing (Airfame-2, Engines-4 & Propellers-2), all the missing avionics and approximately $7,500.00 worth of other valuable inventory. The logbooks, removed avionics and other valuable inventory, all clearly evidenced on US Customs inventory forms (6051's), affixed to the outside of the boxes. Clearly, copies of originals.

Believing, as I was told, that I was the owner and knowing that there existed no way to redo the auction process, in a manner which would be fair to all parties, I chose to go on with my business, of buying and selling aircraft, promptly putting N802ME up for sale.

An auction participant, Patrick Holmes of LEO LEASING, had provided me his card, after the auction, stating that if I were to resell the aircraft, to call him. Which, I did and at his request, provided him with a specification sheet, reflecting all logs and avionics. Other than his response, "My boss say's you're making too much money!", I had no further

contact with him.

I received a phone call from a Special Agent Jack Devaney some time later, whom inquired as to, if I had come into possession of the missing logbooks and avionics. I stated that I had acquired them. When he wanted to know from where I had acquired them, I was puzzled, as to how the US Customs Service could not see on their own paperwork, from where they came. Concerned, that the US Customs Service, might try to take the aircraft and inventory back and negate the considerable time and monies, I had expended to date and the position I had won, at auction, I requested that either the Department of Justice or US Customs, provide a letter that stated, that as long as I had not violated any laws, in the acquisition of these missing logbooks and avionics, that I would remain the rightful owner of the aircraft and inventory, prior to response. Special Agent Devaney stated that he would be back in touch.

Weeks had passed, without response from SA Devaney or anyone at US Customs and I entered into a contract to sell N802ME, to a good faith buyer, in the normal course of business. Inspections were conducted and good faith monies had been placed in escrow, by the buyer, when I learned that the US Customs Service (SA Consavage) had obtained a seizure warrant for all the logbooks and all the avionics for N802ME.

I tried to reason with SA Devaney, only to have him threaten me with obstruction of justice charges, if I did not comply. I retained counsel at my own expense (Brian Kilcullen), whom plainly told SA Consavage that their (USCS) contractor (EG&G) had turned these supposedly missing items over to me, as part of the sale of the aircraft. And, even told him that we held the USCS inventory sheets confirming same. SA Consavage made no attempt to confirm this and insisted on the seizure. On advice of hired counsel, I turned over to SA's Devaney, Consavage & Palmer of the US Customs Service Office of Internal Affairs, all logbooks for the subject aircraft,

including those represented and all avionics removed from the boxes provided. Upon doing so, SA Consavage asked if these were all the avionics for N802ME. I explained that they were not, that they were the ones not shown. He adamantly, indicated that the warrant implicitly stated all avionics, whereupon, I explained to him, that it was a cost prohibitive task, to remove everything, considered an avionic, in a complex aircraft, such as N802ME.

He, then stated, that I could consider the whole aircraft seized. He, pointedly, stated, that the aircraft could not be moved or sold.

At this point in time, I and my counsel were totally confounded as to what was transpiring. Nothing made sense and upon receipt of the affidavit, supporting seizure, it only became more confusing.

The affidavit stated that they, US Customs, had not seized any (0) logbooks or any (0) avionics, when N802ME was originally seized/forfeited. That they had sold the aircraft to me with no logbooks or avionics, that I had paid an exorbitant price, that I had communicated with a Roy Butler, Sr. (unknown at that time) and that I had requested immunity.

The affidavit claimed that, they (USCS) were seizing these logbooks and avionics, for the crimes, for which it's previous owner, Rodney Matthew's, had been prosecuted and found guilty of. That N802ME, had been forfeited to the United States, as part of said trial and that since these logbooks and avionics, belonged to the aircraft, that they constituted forfeited property, for which they were not compensated.

I know what I saw at the showings. I know what the US Customs agents and EG&G personnel saw and said. I know what the US Customs inventory forms, affixed to the boxes provided, showed. And, I know to whom I spoke, to whom I didn't and what was said and what wasn't. I was at a loss, as to why these agents/individuals were saying what they were saying, whom was responsible for the events unfolding and

how I was going to straighten this matter out.

The buyer for the aircraft, promptly, retained counsel and threatened imminent action, for non-performance of the contract in place, prior to seizure. My investment capitol (495K) was no longer mine to use. The aircraft, albeit still in my possession, was costing thousands of dollars, per month. Likewise, my hired counsel and investigators. As, I was to learn later, my credit (Brian Kilcullen's) of over $700,000.00 went to -0-, when my creditors learned of this seizure. Because, SA Consavage had telephoned the escrow agent, conducting the sale in progress and advised them, for reasons unknown, that he, US Customs had a seizure warrant for Brian Kilcullen's airplane.

Being a sole proprietor, my business was over, as I had to spend considerable time running to my lawyers office and investigate what was going on. The loss of a half a million dollars operating capitol and credit, which took decades, to attain, demanded all times and energies I could muster.

The degree of stress, I was under, was considerable, given that my property was under seizure, my credit was ruined, and the US government was stating that I was in possession of property which constituted substitute assets. Property, their contractor (EG&G), had given me, then disavowed they had. All the while, losing thousands of dollars per month.

At my behest, my counsel filed an Emergency Motion for Relief, whereby I, Brian Kilcullen, claimed possessory rights to said seized property. The Magistrate, claimed that she did not have jurisdiction and ordered, that to seek return of seized property, that I would have to file civil action.

Whereupon, after two meetings with the Assistant US Attorneys (AUSA Thompson & AUSA Lester) responsible for this seizure, where we were unsuccessful in gaining release of seized property, under advice of hired counsel, I, Brian Kilcullen, filed civil action against the United States of

America and United States Customs Service. (97-CIV-7027)

Having determined that there was some kind of misrepresentation on the part of EG&G Dynatrend, Inc., I, Brian Kilcullen, filed civil action against EG&G et al. (EG&G Dynatrend, Inc. and parent corporation, EG&G, Inc.) (97-CIV-3765)

Both these actions, named my corporate entity, SkyKnight Air Services, Inc. (SkyKnight) as party plaintiff, pending outcome of discovery.

Both these actions, were filed in order to seek return of seized property and to investigate what we believed may be a tort/constitutional violation. As, the events, individuals and/or parties, leading up to this seizure, were unknown, it was necessary to file action, in order to determine if and what action to pursue.

In spite of considerable efforts, both on my own part and that of counsel, we were unable to ascertain any information from the defendant parties. (USA/USCS & EG&G) The USA/USCS flatly refused to comply with any discovery request and EG&G stated that they were barred from providing any documents, pursuant to their contract with the USA/USCS. My aircraft, was still under seizure. I was still being threatened with action by the potential buyer. And the monies being lost were accruing daily.

If, I yelled once, I yelled it a hundred times, "How can I fight what I don't know!", to my attorneys. We were sending subpoenas and trying to ascertain, by all means possible, what was going on. By whom and how this seizure came to pass. And, both the USA/USCS and EG&G parties, were outright refusing to comply or cooperate.

The Readers Digest version of the remaining historical events of these actions should suffice here.

No discovery was ever received from the USA/USCS and EG&G's first response for production of documents, was over one year after seizure. Which having been screened by the

US government prior to release, was both unresponsive and undeterminative. Even though, US Customs did return the aircraft and seized property approximately 8 months later, without explanation, the costs and damages by that time were considerable. Due to the inability to borrow monies, as I was able to do, prior to this event, I have been unable to recover from the losses, both in monies and time.

Judge Ferguson, the presiding judge for both these cases, granted a stay of all civil proceedings, requested by the government (AUSA Thompson), under seal, for eighteen months. Citing a criminal investigation. Only days after granting the stay, he, Judge Ferguson, granted a Motion to Dismiss for the EG&G defendants, citing that no contract existed between SkyKnight and EG&G and that we could prove no set of facts to support causes of action.

Upon closing of the criminal investigation, which yielded no prosecution, the USA/USCS adamantly refused to comply with discovery and invoked sovereign immunity, citing

"in the government's view, discovery in this case is unnecessary. Regardless of any facts that the plaintiff (SkyKnight) may discover, plaintiff may not be awarded money damages by this Court under the principle of sovereign immunity. The discovery sought by the plaintiff is unwarranted, unjustified, invasive and is not necessary to a determination of the case." Defendant AUSA Rucoba

Whereupon, Judge Ferguson, shortly thereafter, summarily closed the USA/USCS (97-CIV-7027) case on jurisdictional grounds of sovereign immunity.

In spite of making payments to my counsel of record, I was advised that I owed them $92,000.00 and that in order to appeal, they would require $30,000.00 payment immediately.

Which, was not going to happen, given the considerable losses, I had already sustained to that point in time. Which was

September of 2000. Some three years after seizure. Which, without any determinative discovery, as to the seizure and no privilege logs, was the extent of this costly litigation.

The following facts are the result of an investigation, conducted over the past 6 years. The voluminous support, is comprised of US government (USCS), EG&G and other indisputable documentation and evidence.

(N802ME & Inventory - 1991 thru 1997)

1.) Assistant US Attorney Terrence Thompson, responsible for this seizure against Brian Kilcullen, was the prosecutor, responsible for the indicting, arresting and the prosecution of N802ME's former owner, Rodney Matthews. (1991 - 1994)

2.) AUSA Thompson and his case agents, SA Wilkinson (USCS) and SA Ryan (IRS), executed the seizure and inventory of N802ME in conjunction with their contractor, EG&G Dynatrend, Inc. and employees, John Dent and Jerry Hawkins. (October 31 - November 1, 1991)

3.) N802ME, was seized and inventoried, in their presence, complete with all of it's logbooks, all of it's avionics and other valuable inventory. Photographs, video's and inventory were taken. (October 31 - November 1, 1991)

4.) An appraisal was conducted by an expert in aircraft evaluation, shortly after seizure, whereupon this outside appraiser, reflected avionics, which were present in the aircraft, at that time. As well, he calculated the various component times for the airframe and engines, which he could not have done, without the full and complete logbooks for Airframe & Engines. Likewise, his appraisal clearly states all logbooks were present. (December 1991)

5.) AUSA Thompson, SA Wilkinson, SA Ryan and EG&G

Dynatrend, Inc. employee, John Dent all met together to examine and evaluate N802ME and it's inventory, clearly delineated on the USCS 6051 forms, affixed to the boxes, for upcoming trial purposes. (December 16, 1992)

6.) In the criminal trial of Rodney Matthews, EG&G Dynatrend, Inc. employee, John Dent, did testify under oath, in direct and cross-examination, as to the value of N802ME, which he placed at $750,000.00 and his possession and review of the aircraft's logbooks, to determine times in service (engines). All in the presence of prosecutor, AUSA Terrence Thompson and his case agents, SA's Wilkinson and Ryan. (November 8, 1993)

7.) In the criminal trial of Rodney Matthews, AUSA Terrence Thompson, did cross-examine defendant Rodney Matthews and utilizing an enlarged photograph of N802ME's instrument panel, did query Mr. Matthews, as to the numerous "avionics" evidenced. In closure, AUSA Thompson, did again refer to this same photograph and avionics. (December 7-10, 1993)

8.) An inventory for seized assets for US Customs was conducted by the GAO, whereupon N802ME and it's inventory, by use of the USCS 6051 form, which reflected logbooks, removed avionics and other valuable inventory, was inventoried and found to be complete. (February 22, 1994)

9.) John Dent appraises N802ME for USCS, which reflects nothing missing. (June 6, 1994)

10.) John Dent appraises N802ME for USCS, reflecting "no logbooks" and avionics missing. (April 10, 1996)

11.) John Dent advises subordinates to state "no logbooks" in advertising. (1996)

12.) EG&G Dynatrend, Inc. places advertising in Trade-A-Plane, which states that there are "No Logbooks Available" and reflects photo of avionics in instrument panel. (March -1997)

13.) EG&G Dynatrend, Inc., represented by John Dent and Jerry Hawkins and US Customs agents, display N802ME for sale, only showing two out of the eight logbooks, in their possession and withhold those removed avionics, stored in the boxes. (April 21 & 28, 1997)

14.) Roy Butler, Jr. and Patrick Holmes, on behalf of Roy Butler, Sr., are permitted to examine those withheld logbooks and removed avionics, which other showing participants, never see. (April 28, 1997)

15.) John Dent conducts an inventory of seized aircraft, at the Opa-Locka airport, to include but not limited to N802ME and inventory, with USCS agents Robert Del Toro and Anthony Caurdafe. Then (Dent) turns over possession of N802ME and it's associated inventory, to Brian Kilcullen/SkyKnight. N802ME is turned over as represented, with a majority of the avionics installed. Boxes, turned over, contain all logbooks (8), all removed avionics and other valuable inventory, as delineated on the USCS 6051 forms. (May 13, 1997)

The factual significance is indisputable. It cannot be argued. It cannot be misrepresented. Therefore, the only way to prevail, in any action, such as this, is to hide, conceal, deny and deprive. And no instant case, more than this allows such evidenced torts and crimes, to be covered up better. Because, if you go back and read the events, which I experienced, up through dismissals of previous actions, then it is easy to see why I, was excusably ignorant of parties, schemes, actions and the on-going conspiracy, which has yet to accrue.

The following are the evidenced crimes, schemes,

conspiracies and deprivations, perpetrated by this organization. They can appear somewhat daunting and convoluted, but this only plays to this criminal organizations agenda's, as they, being, in part, comprised of law-enforcement, can so easily misrepresent and/or deceive the observer. After all, whom would think that law-enforcement and prosecutors, would be involved in outright theft and fraud. Certainly, we, my counsel and I, didn't.

Factual Significance:

1.) In March/April of 1997, John Dent, Jerry Hawkins and others in the employ of the Department of Treasury contractor, EG&G Dynatrend, Inc., as part of a conspiracy to defraud the United States of America, did cause to be sent by US mail and telephonic facsimile, numerous false and fraudulent misrepresentations with respects to a seized asset aircraft, which had been placed within their care, custody and control. Advertising for auction of said aircraft, did falsely state that the subject aircraft, N802ME, had no logbooks available and was missing avionics equipment. A representation, known to John Dent, Jerry Hawkins and others, at that time, to have been false and a deliberate misrepresentation of fact, so that the full and complete logbooks and avionics within their possession could be sold to co-conspirators after said auction. Thereby, profiting from those monies purloined (18 U.S.C.641) from the United States Department of the Treasury.

2.) On April 21st & 28th, 1997, at the Opa-Locka, Florida airport, John Dent, Jerry Hawkins and other co-conspirators within the employ of both the US Customs Service and EG&G Dynatrend, Inc. did deliberately and with criminal intent, as part of said conspiracy to defraud, withhold and conceal a portion of the logbooks, avionics and other valuable inventory for N802ME, from most prospective buyers. A Roy Butler, Jr. and Patrick Holmes, were permitted access to withheld

inventory.

3.) On April 30th, 1997, N802ME was sold at auction, in Broward County, to Brian Kilcullen of SkyKnight Air Services, Inc. (SkyKnight) for the sum of $365,000.00. The co-conspirators (Roy Butler, Sr., Roy Butler, Jr. and Patrick Holmes), whom were supposed to have outbid N802ME, had withdrawn from said fraud scheme, at the last minute, allowing those bidders, unawares as to any misrepresentations, to bid amongst themselves. N802ME had been represented without the complete logbooks, avionics and other valuable equipment, within both the Department of Treasury and EG&G Dynatrend, Inc.'s cognizant possession, at that time. A loss/purloining of approximately $250,000.00 to the United States of America, as the concealment of those logbooks and avionics withheld, devalued N802ME this amount.

4.) On or about May 13th, 1997, as part of the mandated procedures for the sale of seized assets, John Dent, at the instruction of Jerry Hawkins, by and for EG&G Dynatrend, Inc., did turn over to Brian Kilcullen, all logbooks, avionics and other valuable inventory belonging to N802ME. Both those represented and those withheld. John Dent has repeatedly, denied this event.

5.) On or about, May 21st, 1997, Roy Butler Sr., as part of a scheme to falsely accuse Brian Kilcullen of fraud, did send through the US Mail, a letter to the US Customs Office of Internal Affairs, which did falsely state, that Brian Kilcullen communicated to he (Butler Sr.), information which led Butler to believe that Brian Kilcullen had defrauded the US Customs Service. Which was known to be false, when written, as Brian Kilcullen has never spoken or communicated with Roy Butler, Sr. and information which led he (Butler) to suspect/know of fraud, came from his son and pilot.

6.) On or about July 3rd, 1997, Assistant United States Attorney (AUSA) Terrence Thompson and Special Agents of the United States Customs Service - Office of Internal Affairs, Howard Weintraub, John a/k/a Jack Devaney, Michael Consavage and Michael Palmer, utilizing the "Butler Letter" did conspire with John Dent, Jerry Hawkins and other EG&G Inc. (EG&G Dynatrend, Inc. parent corp.) employees, to perpetrate a criminal fraud against Brian Kilcullen/SkyKnight.

All conspirators did agree to and have in fact, historically concealed their material knowledge and evidence within their possession alone, which showed all logbooks and avionics had been within their cognizant possession at all times from date of original seizure in October of 1991 til delivered to Brian Kilcullen on May 13th, 1997.

7.) On July 15th, 1997, AUSA Terrence Thompson and Special Agents Weintraub, Devaney, Consavage and Palmer, utilizing the "Butler Letter" and conspiracy stated above, did execute a seizure of all logbooks, avionics and personal papers for the subject aircraft, N802ME, from Brian Kilcullen/SkyKnight., stating that these logbooks and avionics had never been in their possession and therefore subject to seizure as substitute assets, pursuant to federal seizure statutes. Said seizure was done so in violation of Brian Kilcullen's 4th Amendment constitutional Right, as AUSA Thompson, the prosecutor responsible for forfeiture of said logbooks and avionics from it's original owner, had material knowledge as to the falsity of this affidavit for seizure, at that time. As well, Special Agent Consavage, had no investigation whatsoever, with which to support the numerous falsities within his affidavit.

8.) Said conspiracies were responsible for the dismissals of Brian Kilcullen/SkyKnight's civil actions to assert his 5th Amendment due process Right for having suffered a violation of his 4th Amendment Rights.

9.) Said conspiracies, still in place to this very day, were responsible for this dismissal of Brian Kilcullen's subsequent equitable action, brought to assert his 5th Amendment Right to due process of law, for all constitutional deprivations suffered.

10.) All statements, declarations, affidavits, representations and positions, effected since this matter began, violate federal criminal statutes, to include but not limited to, predicate acts of mail fraud, wire fraud, schemes to defraud, obstruction of justice and obstruction of a criminal investigation. Per federal RICO statute 18 U.S.C. 1962.

11.) All statements, declarations, affidavits, representations and positions, effected and placed before the courts, since this matter began, violate all applicable codes of professional conduct and Fed.R.Civ.P. Constituting fraud on the court, as defined by the Supreme Court of the United States.

These statements of material fact, with respects to criminal frauds and conspiracies, related above, where I, Brian Kilcullen, was not present, are made as deductions of fact. Made possible today, some 7 years after the fact, due to the enumerable fraudulent positions and statements of the defendant parties, which with out some clear and communicated plan, these numerous individuals and entities, could not have arrived at, otherwise. This is the same level of evidence required by the court's for criminal prosecution and is no less applicable to the civil RICO Conspiracy allegations involved here. Hampton v. Hanrahan F2d. 600, 620-621 (7th Cir. 1979) U.S. v. Gonzalez 921 F.2d 1530, 1540 U.S. v. Valera 845 F.2d 923, 929 (11th Cir. 1988)

As of the filing of this Writ for Certiorari, in spite of numerous presentations of criminal complaints to federal law-enforcement, no prosecution, for the evidenced fraud schemes, false statements to criminal investigators and/or enumerable

extrinsic frauds, have ever been brought. Department of Homeland Security's Office of Internal Affairs, will not even step foot in the room with me.

No individual or entity, within the United States government's employ/contract have been released.

No attorney, either defendant or representative, has ever been sanctioned and/or disciplined for the enumerable violations of professional codes and rules of the courts. In spite of a number of Motions for Sanctions, filed before, both District and Appellate Courts.

And, to date, the United States of America has not received, let alone sought, remuneration for the $250,000.00 defrauded in the sale of N802ME or the millions believed to have been lost due to the on-going criminal enterprise, still in place today.

ARGUMENT

The Rules governing this Court, state that where there has been a departure from the accepted and usual course of judicial proceedings, or a sanction of such a departure by a lower court, that this Court may invoke it's supervisory powers. Such is the case here. Where the lower courts' have sanctioned such a departure from the normal course of civil proceedings, as to abrogate the 4th & 5th Amendments to the United States Constitution and negate the Rule of Law. Relegating these courts, as mere instruments of fraud and a criminal organization.

Perhaps, this departure, in some part, is because this criminal organization, well entrenched within law-enforcement, has perfected a uniquely fashioned fraud scheme, utilizing the asset forfeiture program and statutes.

Nevertheless, no matter which way one looks at the facts, there has been and is egregious violations of federal statute and constitutionally protected Rights, for which these

inferior courts are either ill prepared or unwilling to address.

Questions 1 - 2:

It is apparent that the Civil Forfeiture Statutes, were drafted with the presumption of lawful intent, on the part of law-enforcement. Although, there exist procedures, for the assertion of one's Rights, these provisions, inevitably, place the owner or claimant to seized property, in a prejudicial position. That of proving the property's or, in some instances, one's own innocence. As, opposed to the judicial maxim, that we are innocent until proven guilty.

Whereas, this Court may have found this prejudice, acceptable, to date, this case herein, illuminates the underlying detriments, to such an opinion. For, even if it is just the property, which is arrested, it's term "property" defines ownership. Ownership translates to possession. Possession, directly calls into question the 4th Amendment. That of the right of a person or entity, to possess. In either case, a constitutional prejudice, for a person or persons, whom suffer a seizure of property.

It is in this light, that the statutory language should be interpreted, as it is exactly upon the language and this inherent constitutional prejudice, that I, Brian Kilcullen and no doubt, others, have suffered both 4th and 5th Amendment violations.

For, when law-enforcement, chooses to violate internal codes, federal statutes and constitutional Rights, by perpetrating the taking of private property, when it known to them, that said property is not subject to lawful seizure, then the resulting position, an innocent owner is placed in, is inadequately provided for in the statutes. Because, the statutory language, presupposes lawful intent upon the law and then turns around and places the burden of proof, by the preponderance of the evidence, on the victim.

The innocent owner, is without their property. It is presupposed that the property/owner is guilty. And, if as in this

scenario, the warrant is not only without probable cause, but deliberately manufactured, then the constitutional provisions, within the statutory language, leave the victim to petition the perpetrator of said unlawful act, for relief, to satisfy the statutory requirement.

That of having to prove, by a preponderance of the evidence, that they are "innocent" and "own" or have a property "interest" in said seized property. Because, to assert this violation of a constitutional right, then one has to assert their 5th Amendment Right to due process and seek discovery from the perpetrator. Whom is ensconced behind the shield of law-enforcement. An unconstitutional and prejudicial position, which is not provided for in the statutes and which leaves the innocent owner, no adequate remedy at law.

Such is the case here and less there be any doubt, as to the likelihood or probability of such a deviant occurrence, then look no further, than defendants, AUSA Thompson, AUSA Rucoba and the seizure herein.

The affidavit, supporting seizure of all logbooks and avionics for the subject aircraft, N802ME, as substitute assets, was false, known to be false when written and lacked probable cause. This seizure of private property and papers which occurred on July 15th, 1997, constituted a 4th Amendment violation.

Primarily, because the affidavit supporting seizure was without probable cause. But, in this instant case, a closer examination of the affidavit, reveals a much more sinister plan.

The affidavit was not only false for the purpose of making a seizure, but the statements therein, assigned guilt to the property, by pointing to it's previous owner's crimes and adjudication. The affidavit was seeking, not only the properties taking, but was setting up a 5th Amendment deprivation in one fell swoop.

The supposedly missing avionics and logbooks anomaly, created by John Dent, Jerry Hawkins and others, in

the course of their fraud scheme, played out perfectly to AUSA Thompson's subsequent fraud scheme. That of the taking of property, which he knew, not only to be, not subject to seizure, but the deprivation of due process, by virtue of utilizing a previous crime and adjudication, upon which to forfeit said property's interest. All that was necessary, was to enlist the agreement and participation of John Dent, Jerry Hawkins, EG&G et al. and others. Whom did and still do, disavow their possession and turning over of these supposedly missing logbooks and avionics. A criminal conspiracy of unparalleled proportions.

An examination of 21 U.S.C. 841, 846, 848 & 963, which were utilized for the purposes of this seizure and warrant, outline the crimes, for which this property, could be and was seized and forfeited, previously. An examination of 18 U.S.C. 981, outlines those properties which can be forfeited and the procedures for seizure and possession by the Attorney General. And, 18 U.S.C. 983 provides for the forfeiture proceedings, themselves. Allotting, a process for an "Innocent Owner" pursuant to 18 U.S.C. 983(d) to claim property interest, in any property seized under these statutes, for which the United States seeks forfeiture.

This scenario, created here, does not allot, for the innocent owner, any adequate procedural process by which to attain due process of law. The property seized (avionics & logbooks) was done so, not to prosecute, but to possess alone. As, the affidavit supporting seizure, assigned it's status, as having been previously adjudicated. The proceeds of criminal activity. Crimes, for which, according to the affidavit, these logbooks and avionics were already forfeited.

Here, we clearly have an Assistant US Attorney, seizing forfeited property, for which the Department of the Treasury,

had already been paid[1]. Then turning around and stating that said property, had not been seized previously, so that it can possessed, after the fact.

"A retroactive forfeiture." Thereby, bypassing due process of law and going right to possession. And if the owner (Kilcullen) want's to fight said forfeiture, the evidence, with which to do so, is peculiarly, within the hands of those whom are operating outside the law. Just so happens though, they are the law. With all the sovereign positions and powers afforded them.

This scenario created a situation, where the innocent owner (Kilcullen) is faced with the burden of proving two requisite issues. Pursuant to 18 U.S.C. 983 (d), Brian Kilcullen, must first prove his lawful possession of the logbooks and avionics. Which is an almost impossible task, as those whom sold and delivered them to him (USA/USCS & EG&G) are the ones whom hold the evidence and material knowledge, upon which to rely.

Secondly, if Brian Kilcullen, cannot show transfer of ownership, subsequent to Rodney Matthews trial, then he is under the added burden, of proving that he did not know Rodney Matthews or the crimes he committed. Essentially,

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It is irrelevant, for this argument, that N802ME, did not bring the monies, it would have, if not for John Dent's fraud scheme. As, it was unknown, by Brian Kilcullen, or anyone else for that matter, whom was actively bidding and therefore, the auction was a good-faith sale of the aircraft. What monies were lost, in the sale of N802ME, clearly were the fault of those whom participated in said scheme and no one else. The clear and unequivocal avenue, for any lawful AUSA, would have been to prosecute John Dent, Jerry Hawkins and those whom participated in said scheme. Then seek compensation from them and their company, EG&G Dynatrend, Inc.

"retroactive indictment" by virtue of possession. Once again, the proof is within the hands of the perpetrators.

The constitutionally prejudiced position, that AUSA Thompson, put Brian Kilcullen into, is without process. Yes, one might say that he could bring action and seek due process at a hearing, but that does not provide for a procedural or substantive process either.

Lest, we forget, Brian Kilcullen, did bring civil action and was unsuccessful in those pursuits. One, has only to look to 18 U.S.C. 981 (g), to see that which permitted AUSA Thompson, to protect his scheme.

This provision (g) provides for the institution of a stay of a civil forfeiture proceeding, if the court determines that civil discovery will adversely affect the ability of the government to conduct a related criminal investigation.

No, there was not a civil forfeiture proceeding, per se, at that time. But, one needs to look at this aberrant process in the light, with which it was cast. The property was being touted, as already having been adjudicated and forfeited. AUSA Thompson's Declaration, filed with the court, under seal, pursuant to subpart (g)(5), shows the means by which he chose to hide his scheme and inevitably his true intent. He already knew that John Dent, Jerry Hawkins and others, had defrauded the United States, but due to his criminal conspiracy with said individuals, it was incumbent upon him, to enact a concealment of all evidence and material knowledge, by utilizing the grand jury, the courts and this stay as bar, to any civil discovery.

And, if there be any doubt, as to the true intent of this supposed criminal investigation, then one has but to look to the end result. That of no criminal prosecution. For, to do so, AUSA Thompson would open the door for John Dent, Jerry Hawkins and EG&G et al. to attack him and reveal his own criminal conspiracy, to defraud Brian Kilcullen.

A convoluted, aberrant and criminal conspiracy and

plan, instituted by an Assistant United States Attorney. Whom did and is, utilizing his office, his Department and the sovereign powers, afforded him, to effect unlawful and unconstitutional frauds.

Either, this shows a constitutional flaw within the applicable statutory language or AUSA Thompson, has invented a new constitutional tort. In either case, a constitutional deprivation, suffered by Brian Kilcullen, whom pursuant to principles of equity and the Constitution of the United States, is entitled to due process of law and redress for all injuries sustained by this 4th Amendment violation (seizure) and subsequent 5th Amendment deprivation. Bivens v. Six Unnamed Federal Narcotics Agents 477 U.S. 368 (1970) Franks v Deleware 438 U.S. 154, 98 S.Ct.2674 (1978) Fuentes v. Shevin 407 U.S. 67, 86, 92 S.Ct. 1983, 1997 (1972) Perry v. Sindermann 408 U.S. 593, 601, 92 S.Ct. 2694, 2699 (1972) Olim v. Wakinekona 461 U.S. 253, 103 S.Ct. 1741, 1748 (1983) Christopher v. Harbury 122 S.Ct. 2179, 2185 (2002)

Questions 3 & 4:

This instant equitable action (02-60964-CIV-WJZ) and a most recent Rule 60(b) Motion for Relief From Judgement and Sanctions, pursuant to Rule 60(b)(2)(3)(6) have both been summarily dismissed/denied, without any discovery or 5th Amendment Due Process Hearing[2]. The affirmative defenses, with which all party defendants have prevailed in this action, are Standing, Pleading, Limitations and Jurisdiction. The defenses, put forth to attack Brian Kilcullen's, most recent, Motion, are, more fraud, more deceit and the principles of Res Judicata or estoppel. Essentially, "we prevailed before, therefore, we should prevail again!"

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Or any evidentiary hearing, upon which allegations of fraud and misrepresentation, could be revealed.

The principle of equity, would seem to dictate that those whom are in equity, are entitled to it. The filing of an equitable motion or action, pursuant to Rule 60(b)(2)(3)(6) of the Fed.R.Civ.P., by it's very invocation, asserts that there is new determinative evidence, not previously obtainable, that there has been some form of fraud, misrepresentation, or other misconduct of an adverse party. And, that there exist some other reason justifying relief from the operation of the judgement.

Where a litigant, is to have allegedly suffered a constitutional tort/deprivation by fraud, misrepresentation or other misconduct, pursuant to the Constitution of the United States, it would appear, not only equitable, but a subsequent constitutional deprivation, if said action/motion, were to be dismissed again, without some determination and/or adjudication on the conduct alleged to have occurred.

The filing of such a motion and/or action, pursuant to the principles of equity, would, at very least, call for a hearing, upon which to make a determination of the constitutional question raised, evidentiary value of newly uncovered evidence and/or whether misconduct occurred in the formation of the judgement.

In this instant scenario, as evidenced above, Brian Kilcullen, did suffer both a 4th Amendment taking of private property violation and a subsequent 5th Amendment due process deprivation. Upon filing of an equitable action and/or motion though, whereupon, the plaintiff alleges numerous frauds, misrepresentations and other unlawful misconduct, which he claims rises to the level of, fraud on the court, no discovery is permitted, nor inquiry or evidentiary hearing is conducted, before the court, arbitrarily, relegates said egregious accusations and acts, as frivolous. A determination of fact, without even so much as an examination of the evidence. Certainly, inequitable if said allegations, are in fact true and, nevertheless, an act not consistent with jurisprudence.

If these courts, serve any underlying precept, it would be to fairly adjudicate on the merits of the cases, before them. The finders of truth. For, without truth, the law is merely an exercise in judicial theory.

The Final Order of Dismissal, from which Brian Kilcullen appeals, is not factually correct. It is not that there has been an incorrect finding of fact. It is, that there has been no findings of fact, at all. The questions which are raised here, is how can there be any adjudication, in any civil action, where there is genuine dispute as to material facts, without discovery and a hearing. A full and fair hearing as outlined by the 5th Amendment and mandated, by this high court, for those cases where there has been a constitutional violation alleged.

Judge Zloch's order closing this action, which the 11th Circuit Court of Appeals, has affirmed, without opinion, is an utter impossibility. Brian Kilcullen was present for those events and acts, which he alleges violated his constitutional Rights. He, has conducted an extensive investigation, over a period of 6 years. The defense counsel, weren't there. Judge Zloch wasn't there. No evidentiary hearings have been conducted before the court. Yet, here we have a finding of fact, where there has never been discovery permitted or a hearing into the factual issues raised, which determines that Brian Kilcullen does not have Standing. That Brian Kilcullen, a non attorney, has not Plead properly. And, Brian Kilcullen, sat on his rights and did nothing to assert them within the applicable Statutes of Limitations. An utter abomination.

Likewise, the court has upheld the time honored ruling that a corporation cannot appear *pro se*, in federal court.

I, Brian Kilcullen, hereby state, that this is anything, but jurisprudence and the rule of law. No entity, nor person on this entire planet, would look at the facts or the filings, in this instant EQUITABLE action and arrive at such an unconstitutional and unlawful judgement.

This case begs for equity. And equity would permit a

corporation to appear in federal court, to assert it's constitutional right to due process of law, where it is alleged, that said funds necessary to secure representation[3], were lost to due to the fraudulent misrepresentations and unlawful misconduct of an adversary and their counsel, in previous litigation.

Equity, would demand, that anyone whom alleges to have suffered a constitutional deprivation, during the course of litigation, where said deprivation is alleged to have been the result of an adjudication, gained by fraud, misconduct or misrepresentation, would be entitled to, at very least, an evidentiary hearing and/or discovery, to make a factual determination of the allegations. Hickman v. Taylor 329 U.S. 495, 507 (1947) Wood v. Carpenter (1979) 101 U.S. (11 otto) 135, 143, 25 L.Ed. 807

Question 5:

The obvious necessity for these questions being raised herein, is the blatant deceits and frauds, being perpetrated upon these courts. The courts are to be the finders of truth. How can they find that which they don't mandate?

The Federal Rules of Civil and Appellate Procedure, call for the officers of the court, to conduct themselves in accordance with the court's rules and the governing codes of professional conduct. Both of which, implicitly state that the attorneys, whom appear before them, are subject to the courts inherent judicial powers, for any violations believed to be taken in bad-faith.

Yet, here we have enumerable licensed attorneys, whom appear before these federal courts, both district and appellate,

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Brian Kilcullen, utilized his and his company's funds to pay for licensed counsel, for over three years. And, still owes $92,000 to previous counsel.

whom, with total disregard for the rules of the court, codes of professional ethics and the rule of law, perpetrate unlawful and unconscionable acts, in order to prevail.

The question placed before this, last court of resort, is why do these courts, where it is alleged to have had frauds, deceits and criminal acts, to include but not limited to, fraud on the court, perpetrated upon them, not hold hearings and investigations into the determination of said allegations.

If the defendants and the Department of Justice, take issue with this question, in that they believe that it might burden the workload of these federal courts, then I suggest that the principle of getting it right the first time, may be a more economical use of these courts' and judges' time. For, these deceits, frauds and misrepresentations, have cost more than just time and monies, but the very integrity of the courts themselves.

A Grand Jury is empaneled, not to prosecute, but to shield. A false Declaration, placed before the court, not to protect a criminal investigation, but to block discovery. A knowingly false statement before the court, that discovery is unwarranted, invasive and not determinative to this case, to supplant an end-run around the law. And, finally, sovereign immunity is invoked, not because the facts support it's invocation, but to outright, deny due process of law.

All done so, to shield: criminal fraud against the United States; criminal conspiracy to defraud Brian Kilcullen of private property; and, a subsequent conspiracy to defraud Brian Kilcullen of Due Process of Law.

Abuse of Discretion:

The means by which this particular criminal enterprise, exacts it's concealment, should cause this court and this country to pause. It is self-evident, that those within law-enforcement can and have, perpetrated criminal acts. It is not necessary to overstate the obvious, why criminal elements, both within law-

enforcement and civil positions, would enact cover-ups. Nor, that officers of the court would participate, by either making misrepresentations as to material fact or facilitating said misrepresentations.

What makes this organization so unique and dangerous, is it's breadth and it's unique abuses of the rules and positions it holds. It encompasses both the Departments of Justice and Homeland Security, components therein and civil contractors, whom possess inordinate powers and/or positions, within the asset forfeiture program and law-enforcement. Affording them unparalleled powers and opportunities, never envisioned by the present statutes, rules and judiciary

The primary power of this organization is it's abilities to make false statements, utilize said falsities to enact fraud and then conceal both said false statements and acts.

The Appellant, Brian Kilcullen, hereby states that Writs of Mandamus may be necessary in order to attack this organization. For it is not only what these criminals do, but more importantly, what they choose, not to do.

This abuse of discretion, is not only criminal, but illuminates a far more damaging event. That of the abuse of the judiciary and it's processes to effect concealment.

Further, whilst John Dent, Jerry Hawkins and others, to include but not limited to, federal agents, make knowingly false statements in sworn deposition and court filings, the Department of Treasury/Homeland Security and Department of Justice abuse their discretion, yet again, by not only refusing to prosecute, but allowing said falsities to be put before the courts. Playing off said falsities and deceits, so as to enhance and/or substantiate their positions. Known fraudulent positions.

This abuse of discretion, is not only an abuse of their respective departments, but an abandonment of their positions and duties all together. Which, has and does permit this criminal organization to utilize these federal law-enforcement departments and federal courts, as instruments by which to

perpetrate their own unlawful schemes.

Effects of this Criminal Enterprise:

The effects of this criminal enterprise and it's perpetration of violations of federal statute and constitutionally protected Rights, is without a doubt, the most horrific in history.

Yes, I, Brian Kilcullen, want my day in court. Yes, I want that which the Constitution of the United States guarantees. But, that which commands and demands this high Court's attention and supervisory powers, goes far beyond Brian Kilcullen or this instant action.

Firstly, this criminal enterprise has negated the rule of law, by utilizing their sovereign positions and powers to their own personal agenda's. Criminal agenda's at that.

Secondly, the frauds perpetrated by this criminal organization have abrogated the 4th Amendment Right of the citizens of these United States to be free from seizure of private property and papers without probable cause and their subsequent 5th Amendment Right, to due process of law for any invasions of constitutionally protected Rights.

Thirdly, the utilization of these federal courts and abuse of positions, as officers of the court, in furtherance of fraud schemes, undermines the integrity of these courts and relegates them as mere instruments of fraud, instead of that which they were intended to be. A direct attack on the judiciary itself, thereby, a direct attack on our civilized society.

And, lastly, by virtue of their abandonment of the crucial law-enforcement positions they hold, the subjecting of the United States and it's citizens, to attacks, such as evidenced on September 11th, 2001.

The very core of our society and civilization is under attack. Not just by some terrorist whom have infiltrated our borders from abroad, but by those whom have infiltrated our government and police.

This criminal enterprise, evidenced herein, is without a doubt, the most egregious criminal organization, in this country's history. The mob, for whom RICO statutes were formed, has nothing on them.

The sovereign powers afforded these individuals, is not discretionary, within their own views, but by that of statute and the Constitution of the United States.

By virtue of the facts, which I hold and know to be true, those federal defendants, named herein, whom hold and/or held law-enforcement positions (agents or prosecutors), during any time periods relevant to this subject matter, not only abused their discretion with respects to outright refusals to prosecute those known to have violated federal criminal statute, but enacted complex and concerted fraud schemes and cover-ups, in order that all schemes and those involved, be concealed.

This took time. This took communications. This took concerted, well thought-out, action and inaction, on the part of all whom participated. Which did, unequivocally, deny them, law-enforcement, the ability to prosecute their duties and responsibilities, they were sworn and paid to do.

They were not at their post. They may have occupied their respective offices. They may have, even performed certain requisite duties, pursuant to their positions. But, there is no way in hell, that they could have been fully focused on the prosecution of their duties and responsibilities, at that time.

I, am a pilot, mechanic, businessman, litigant, etc... When I occupy my pilot in command seat, in flight, I cannot concentrate on upcoming legal filings or matters. When I am in negotiations in business, I cannot be thinking of mechanical difficulties or problems. To do so, is to fail in both pursuits. As, it is impossible to serve two masters, at the same time. The time of these law-enforcement components, at that time, when these frauds, conspiracies and deceits, were perpetrated, belonged to us, the People of these United States. It was not there's (defendants) to use to their own unlawful agenda's and

as it is clearly evident that they were preoccupied at that time, then it is without doubt, that we, the people of the United States, did not receive that which we paid for and more importantly, expected, was being done.

Whilst these law-enforcement individuals and entities, conspired to and enacted, said schemes to defraud, cover-up and deprive, in the Southern District of Florida, a number of the 9-11 hijackers, lived, trained and planned, the horrific events of September 11th, 2001, in the Southern District of Florida.

The President of the United States, in order to address deficiencies in federal law-enforcement, to be better prepared and able to prevent such occurrences in the future, has formed and instituted the Department of Homeland Security (DHS). A much larger and more uniformly focused department, which is supposed to eliminate inter-agency anomaly's and delays, by consolidating, under one roof, all law-enforcement agencies dedicated to the protection of our borders. In so doing, the US Customs Service was transferred from the Department of the Treasury to this new department.

Yet, due to the inability or unwillingness of law-enforcement, to cleanse themselves of these criminals, we are no better of today, as defendant SA Devaney is now the Special Agent in Charge for DHS (Ft. Laud.) and defendants, Thompson and Rucoba, are still criminal prosecutors, for the Ft. Lauderdale Office of the US Attorney.

The 9-11 Commission is seeking information on what could have been done, that wasn't, which could have prevented 9-11. I believe and I'm sure that those family members, loved ones and friends, of those whom perished on September 11th, 2001, would agree, that a sizeable contingent of federal law-enforcement agents, being pre-occupied with their own unlawful pursuits, in that same district, from which the lead terrorist launched their attack, would qualify as a contributing factor.

These are the facts. The facts, as known to me

personally. Which evidence what can and will occur again, if not for the prosecution of this criminal organization and it's participants. Those whom have participated in it's core frauds and schemes and those whom, by abuse of their discretion, condone and perpetuate it's existence. As, it is clearly evident by the actions, inactions and outright dereliction of duty, evidenced by the DHS' Office of Internal Affairs and the Departments of DHS and DOJ's Inspector General's Offices, that they are wholly unprepared and unwilling to rid themselves and their agencies, of fraud and criminal activity.

All, at our expense. These United States are not served by allowing individuals and entities to purloin millions of dollars! Justice and the American way are not served by turning a blind eye to theft and fraud! And, the security of this nation and it's citizens is not served by those whom swear an oath to the United States and it's Constitution, take payment for said positions, then abandon their post and ply their own unlawful and unconstitutional agenda, whilst occupying said positions. They cannot serve two masters. Nor are they now!

This subject matter, this case and this Writ for Certiorari, is all about the truth. Which is that this government and the lower courts, have sanctioned and condoned such an egregious and criminal departure from the lawful and constitutional execution of their duties and responsibilities, as to jeopardize our way of life, our liberty and our very lives.

Respectfully submitted,
June 4th, 2004

Brian Kilcullen, *pro se*
1208 Seminole Drive
Ft. Lauderdale, Florida, 33304
Tel: (954) 772-0200

I, Brian Kilcullen, swear that the statements and facts herein, are true and correct to the best of my knowledge and supported by numerous documents and evidence within my possession, on today's date of June 4th, 2004.

Brian Kilcullen

The foregoing instrument was acknowledged before me this 11th day of June, 2004, by Brian Kilcullen, who is personally known to me.

Signature _____
Notary Public, State of Florida

Debra S. Hiers
My Commission DD305825
Expires March 31, 2008

APPENDIX

A-1: U.S. Court of Appeals - 11th Circuit - Order

A-2: U.S. Court of Appeals - 11th Circuit - Order

A-3: U.S. Court of Appeals - 11th Circuit - Order

A-4: U.S. Court of Appeals - 11th Circuit - Mandate

B-1: U.S. District Court - Southern District of Florida
Final Order of Dismissal

A-1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-12108
Non-Argument Calender

D.C. Docket No. 02-60964-CV-WJZ

BRIAN KILCULLEN,

Plaintiff-Appellant,

versus

GUY A. LEWIS,
TERRENCE THOMPSON,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Florida

(November 5, 2003)

Before TJOFLAT, DUBINA and MARCUS, Circuit Judges.

PER CURIAM:

Brian Kilcullen appeals the district court's order of March 19, 2003 dismissing this action, which presents claims under the Racketeer Influenced and Corrupt Organization Act (RICO), 18 U.S.C. 1964(c), the Supreme Court's decision in Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 395-97, 91 S.Ct. 1999, 2004-05, 29 L.Ed.2d 619 (1971), and various state laws. Stripped to its core, Kilcullen's appeal challenges the district court's holdings that (1) the district court lacked jurisdiction to review another district judge's decision, (2) Kilcullen lacked standing to assert his claims, and (3) the statute of limitations barred all but one of his claims.

The district court's March 19 order addressed each of these points comprehensively and at length. We find no error in the court's analysis or the conclusions it reached.

AFFIRMED.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

November 5, 2003

THOMAS K. KAHN
CLERK

A-2

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-12108

BRIAN KILCULLEN,

Plaintiff-Appellant,

versus

GUY A. LEWIS,
TERRENCE THOMPSON,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

BEFORE: TJOFLAT, DUBINA and MARCUS, Circuit Judges.

BY THE COURT:

Appellant's motion "for sanctions and disciplinary action ..." is DENIED.

The Butler Appellees' motion for sanctions against Appellant pursuant to Eleventh Circuit Rule 27-4, for filing a frivolous motion, is GRANTED in the amount of $437.50 in attorney's fees.

The EG&G Appellees' request to strike the Rule 11

letters and Affidavit of Appellant attached to Appellant's motion for sanctions is DENIED. The Court notes that it will not consider those documents in its review of the merits of this appeal.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

November 5, 2003

THOMAS K. KAHN
CLERK

A-3

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-12108

BRIAN KILCULLEN,

Plaintiff-Appellant,

versus

GUY A. LEWIS,
TERRENCE THOMPSON,
LAURIE RUCOBA,
HOWARD WEINTRAUB,
MICHAEL CONSAVAGE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

ON PETITION (S) FOR REHEARING AND PETITION (S) FOR REHEARING EN BANC
(Opinion_____, 11th Cir., 19__, ____F.2d____).

Before: TJOFLAT, DUBINA and MARCUS, Circuit Judges.

PER CURIAM:

The Petition (s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition (s) for Rehearing En Banc

are DENIED.

ENTERED FOR THE COURT:

"s/ illegible"
UNITED STATES CIRCUIT JUDGE

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 28 2004

THOMAS K. KAHN
CLERK

A-4

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-12108

BRIAN KILCULLEN,

Plaintiff-Appellant,

versus

GUY A. LEWIS,
TERRENCE THOMPSON,
LAURIE RUCOBA,
HOWARD WEINTRAUB,
MICHAEL CONSAVAGE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

JUDGEMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgement of this Court.

Entered: November 5, 2003
For the Court: Thomas K. Kahn, Clerk
By: Gilman Nancy

FILED

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

Nov 5, 2003

THOMAS K. KAHN
CLERK

ISSUED AS MANDATE
FEB 05, 2004
US COURT OF APPEALS
ATLANTA, GA.

B-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-60964-CIV-ZLOCH

BRIAN KILCULLEN,

Plaintiff,

FINAL ORDER OF DISMISSAL

vs.

GUY LEWIS, TERRENCE THOMPSON, LAURIE RUCOBA, HOWARD WEINTRAUB, MICHAEL CONSAVAGE, JOHN DEVANEY, MICHAEL PALMER, EG&G TECHNICAL SERVICES, INC., formerly EG&G Dynatrend, Inc., EG&G, INC., GEORGE MELTON, JERRY HAWKINS, JOHN DENT, ROY BUTLER, SR., ROY BUTLER, JR., and PATRICK HOLMES,

Defendants,

_____/

THIS MATTER is before the Court upon Defendants, Roy Butler, Sr., Roy Butler, Jr., and Patrick Holmes' Motion to Dismiss Plaintiff's Amended Complaint With Prejudice And Motion to Strike Demand For Punitive Damages (DE 77), Defendants, EG&G, Inc., EG&G Technical Services, Inc., George Melton, Jerry Hawkins and John Dent's Motion To Dismiss Plaintiff's Amended Complaint For Monetary And Injunctive Relief With Prejudice And Motion To Strike Demand For Punitive Damages (DE 78) and Defendants, Guy Lewis, Terrence Thompson, Laurie Rucoba, Howard Weintraub, Michael Consavage, John Devaney and Michael Palmer's Second Motion To Dismiss For Failure To State A Claim (DE 80). The Court has carefully reviewed said

Motions, the entire court file and is otherwise fully advised in the premises.

I. Background

Plaintiff, Brian Kilcullen (hereinafter "Kilcullen") commenced the above-styled cause by filing a Complaint For Monetary Damages (DE 1) on July 15, 2002. The Complaint (DE 1) filed by Brian Kilcullen "pro se"named as Plaintiffs "SkyKnight Air Services, a Florida Corporation and Brian Kilcullen, President", contained 335 numbered paragraphs on fifty-six (56) pages, listed nine (9) Counts against various groups of Defendants and included one hundred pages of exhibits. By prior Order (DE 15) the Court required Kilcullen and SkyKnight Air Services, Inc. (hereinafter "SkyKnight") to "file a short and plain statement of their cause of action in compliance with Rule 8 of the Federal Rules of Civil Procedure" and identified specific information that Kilcullen and SkyKnight were required to provide. Also, in that Order (DE 15) the Court noted that failure to comply with its provisions would result in dismissal. Kilcullen "pro se" on behalf of SkyKnight and himself as president filed a thirty-one (31) page response (DE 32) to the Court's Order (DE 15). Additionally, Kilcullen "pro se" on behalf of SkyKnight and himself as president filed a thirty-one (31) page "RICO Case Statement Per Local Rule 12.1" (DE 41).

Noting that a corporation cannot appear pro se, by prior Order (DE 63) the Court required SkyKnight to retain legal counsel by December 2, 2002 and stated that failure to retain counsel would result in SkyKnight's claims being dismissed. SkyKnight did not retain legal counsel, however Kilcullen filed a "Motion For Rule 24(a)-2 Intervention Of Right And/Or Rule 25(c) Substitution Of Parties" (DE 65) seeking to modify the Complaint (DE 1) and to substitute Kilcullen as a Plaintiff in place of SkyKnight. By prior Order (DE 68) the Court, noting that pro se pleadings must be construed liberally, construed Kilcullen's Motion to Intervene (DE 65) as a Motion to Amend the Complaint which the Court granted. The Court noted,

however, that Kilcullen "must establish standing for any action brought in his own name" and, in any action on behalf of SkyKnight, the corporation must be represented by an attorney. On December 27, 2002, Kilcullen acting pro se on behalf on himself only filed an Amended Complaint For Monetary Damages and Injunctive Relief (DE 73) listing, in 490 numbered paragraphs and eight five (85) pages, nine (9) Counts against various groups of Defendants and including one hundred pages of exhibits.[4] Furthermore, on January 25, 2003, Kilcullen filed a fifty (50) page "Amended RICO Case Statement Per Local Rule 12.1" (DE 79).

The Amended Complaint (DE 73), like the original Complaint (DE 1), is based on a series of events which occurred in 1997. Kilcullen is the sole employee, officer and shareholder of SkyKnight a corporation organized and existing under the laws of the State of Florida and having it's primary place of business in Broward County Florida. See DE 1, P 1; DE 73, P 8.[5] On or about October 31, 1991, a 1979 Swearingen Merlin III aircraft registration number N802ME and its associated inventory (collectively hereinafter the

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The Court notes that the Amended Complaint (DE 73) violates Fed.R.Civ.P. 8 in that it is not a "short and plain statement" of Kilcullen's claims. Moreover, by prior Order (DE 15), the Court required Kilcullen to comply with this rule. Nevertheless, as pro se pleadings are to be construed liberally, e.g. Loren v. Sasser, 309 F.3d 1296, 1301 (11th Cir. 2002), the Court will consider the factual allegations broadly and consider any cause of action which may be based thereon.

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Unless otherwise specified, the facts adopted by the Court for the purpose of this Final Order of Dismissal are those set forth by Kilcullen in his Amended Complaint (DE 73).

"aircraft") was seized by the United States Customs Service (hereinafter the "USCS") from Rodney Matthews in relation to a criminal investigation and indictment. In due course, the USCS inventoried, valued and put up for auction the aircraft. Significant to the above-styled cause, the aircraft's logbooks which are necessary for proper registration and maintenance of the aircraft were not properly inventoried. As a result, although the USCS originally appraised the aircraft as if it was accompanied by a complete set of logbooks, later inventories and valuations demonstrate an incomplete set of logbooks. Moreover, documents concerning the auction of the aircraft and the eventual price for the aircraft at auction on April 30, 1997 evidence an incomplete set of logbooks.

Defendant, EG&G Technical Services, Inc. (under its former name, EG&G Dynatrend, Inc.) was contracted by the USCS to possess and maintain the aircraft pending the outcome of the Matthews investigation and trial. EG&G Technical Services, Inc. and its parent company Defendant, EG&G, Inc. and their employees Defendants, George Melton, Jerry Hawkins and John Dent (collectively hereinafter the "EG&G Defendants") allegedly (either negligently or intentionally and as part of a conspiracy) altered USCS documents and mislead potential buyers as part of a plan to devalue the aircraft. During April 1997, the EG&G Defendants, acting on behalf of the USCS, advertised and displayed the aircraft in preparation for a public auction. Among the viewers and eventual bidders were Kilcullen on behalf of SkyKnight and Defendants, Roy Butler, Jr., and Patrick Holmes on behalf of Defendant, Roy Butler, Sr. (collectively hereinafter the "Butler Defendants"). On April 30, 1997, SkyKnight's offer of $365,000 was the high bid in an auction conducted by the EG&G Defendants and on May 13, 1997 SkyKnight took possession of the aircraft. Upon taking possession, SkyKnight discovered logbooks and other avionics not inventoried or disclosed by the EG&G Defendants and, on May 15, 1997, SkyKnight offered the aircraft for sale with complete logbooks and all associated inventory for $495,000.

After contacting SkyKnight regarding the resale of the

aircraft, Defendant, Roy Butler, Sr. contacted by telephone and sent a letter dated May 21, 1997 to Defendant, Howard Weintraub of the USCS noting Butler, Sr.'s concern regarding the "possible criminal defrauding of the U.S. Government." Soon thereafter the USCS and the Office of the United States Attorney for the Southern District of Florida commenced an investigation SkyKnight's purchase of the aircraft at auction and SkyKnight's proposed resale of the aircraft. Defendants, Howard Weintraub, Michael Consavage, John Devaney and Michael Palmer of the USCS, Assistant United States Attorneys, Defendants Terrence Thompson and Laurie Rucoba and the United States Attorney for the Southern District of Florida at the time, Defendant Guy Lewis, (collectively the "Federal Defendants") were allegedly involved in the criminal investigation and subsequent civil litigation regarding the aircraft. On June 18, 1997, SkyKnight entered into a contract to sell the aircraft to Pat Grasch of PATCO, however, the sale was stalled because of liens which interfered with title to the aircraft. On July 15, 1997, in compliance with a subpoena, SkyKnight turned the aircraft's logbooks over to the USCS and pursuant to a warrant the aircraft was seized. Soon after the seizure of the aircraft, SkyKnight allegedly could no longer "conduct business."

On July 20, 1997, Kilcullen filed an Emergency Motion For Relief From Seizure Order which, on July 30, 1997 was denied for lack of jurisdiction by United States Magistrate Judge Lurana Snow. Subsequently, on August 25, 1997, SkyKnight through legal counsel and based on the facts outlined above filed a "Complaint For Return Of Seized Property, Monetary Damages, and Injunctive Relief" against the United States and the USCS. This case was assigned to Judge Wilkie Ferguson of the United States District Court for the Southern District of Florida under docket number 97-7027-CIV. Through this Complaint, SkyKnight sought damages and injunctive relief arising out of an "unlawful seizure". A multitude of discovery issues were raised and litigated by the

parties. On September 29, 2000,[6] Judge Ferguson granted summary judgement in favor of the defendants ruling that the United States had not waived sovereign immunity to allow a property owner to seek damages for a violation of constitutional rights. Judge Ferguson subsequently granted in part the defendants' Motion to Tax Costs.

On October 27, 1997, based on the same facts outline above SkyKnight, through Legal counsel, filed, in Florida state court, a "Complaint and Demand For Trial By Jury" against EG&G, Inc. and EG&G Dynatrend, Inc. This case was removed to federal court, assigned the docket number 97-3765-CIV and transferred to Judge Ferguson. In this Complaint, SkyKnight sought relief based on Breach of Contract, Breach of Implied Contract, Negligent Misrepresentation and Tortious Interference with a Business Contract. A multitude of discovery issues were raised and litigated by the parties. On September 30, 1998, Judge Ferguson dismissed this action for failure to state a claim. Judge Ferguson subsequently denied SkyKnight's Motion For Reconsideration and granted in part the defendants' Motion To Tax Costs.

On February 9, 1998, the aircraft was released by the USCS. Though not acknowledged by Kilcullen in the Amended Complaint (DE 73), SkyKnight sold the aircraft at a profit in April, 1998. See DE 80, p.3. The remainder of the Amended Complaint's factual allegations concern interactions with the various Defendants regarding pleadings entered in and evidence offered in the two cases presented to Judge Ferguson. In the Amended Complaint and in his various responses to the instant Motions (DE Nos. 77, 78, 80[7]), Kilcullen specifically

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The Court notes that Case no. 97-7027-CIV-FERGUSON was stayed for approximately eighteen months while a criminal investigation was pending.

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The Court notes that Kilcullen's Response To

relies on alleged discovery violations which occurred during the prosecution of the two cases before Judge Ferguson as a basis for his action and as grounds to deny the instant Motions to Dismiss.

The Amended Complaint (DE 73) has nine (9) labeled Counts. Each Count, in violation of Fed. R. Civ. P. 8, includes multiple causes of action allegedly committed by all or various groups of the Defendants. The Counts are labeled: "Count I-Negligent Misrepresentation"; "Count II-Fraudulent Misrepresentation"; "Count III-Fraud In The Inducement"; Count IV-Unlawful Seizure"; "Count V-Tortious Interference With A Business"; "Count VI-Civil Conspiracy To Cover-Up Fraud, Unwarranted Seizure, Perjury And Obstruction Of Justice"; "Count VII- Fraudulent Non-Disclosure And Fraudulent Concealment"; Count VIII- Intentional Infliction Of Emotional Distress"; and "Count IX-Injunctive Relief From Court Orders Closing 97-CIV-7027 & 97-CIV-3765 And Awarding USA/USCS & EG&G Dynatrend, Inc. Tax For Costs." As a subheading to each of these Counts, Kilcullen alleges violations of the federal RICO Act, 18 U.S.C. 1962, the Florida RICO Act, Fla. Stat. ch. 772.103 and the Fourth and Fifth Amendments to the United States Constitution.

In their Motion (DE 77), the Butler Defendants suggest

Defendants Guy Lewis, Terrence Thompson, Laurie Rucoba, Howard Weintraub, John Devaney, Michael Consavage, Michael Palmer's Second Motion To Dismiss (DE 89) was filed in violation of Rule 5.1(A)(4) of the Local Rules of the United States District Court for the Southern District of Florida. Kilcullen, after the Court by prior Order (DE 87) denied his Motion for Leave to File in Excess of 20 Pages (DE 85), reduced the page margins of his pleading below one inch. As Kilcullen's Response (DE 89) merely restates arguments already before the Court, however, the Court does not strike this pleading.

five grounds upon which the Court should dismiss all or part of Kilcullen's Amended Complaint. The are: (1) Kilcullen lacks standing to pursue these causes of action, (2) the applicable statutes of limitations bar these claims, (3) failure to state a claim upon which relief may be granted, (4) the claims are barred by the doctrine of collateral estoppel, and (5) the court lacks jurisdiction to review orders issued by Judge Ferguson.

In their Motion (DE 80), the Federal Defendants suggest eight grounds upon which the Court should dismiss all or part of Kilcullen's Amended Complaint. They are: (1) failure to comply with the pleading requirements of Fed. R. Civ. P. 8, (2) Kilcullen lacks standing to pursue these causes of action, (3) the applicable statutes of limitations bare these claims, (4) the federal RICO claim has not been properly plead, (5) federal employees are not subject to state common law claims for acts within the scope of their employment, (6) Defendants, Lewis, Thompson and Rucoba as government attorneys are absolutely immune for acts within the scope of their employment, (7) the non-attorney Federal Defendants are entitled to qualified immunity, and (8) the claims are barred by the doctrine of collateral estoppel.

In their Motion (DE 78), the EG&G Defendants suggest five grounds upon which the Court should dismiss all or part of Kilcullen's Amended Complaint. They are: (1) Kilcullen lacks standing to pursue these causes of action, (2) the claims are barred by the doctrine of collateral estoppel and res judicata, (3) failure to state a claim upon which relief may be granted, (4) the applicable statutes of limitations bar these claims, and (5) the court lacks jurisdiction to review orders issued by Judge Ferguson.

II. Subject Matter Jurisdiction

Subject matter jurisdiction is a threshold issue for the Court. Steel Co. v. Citizens For A Better Env't, 523 U.S. 83, 94-95 (1998). In determining subject matter jurisdiction the Court must look to the allegations of Kilcullen's Amended Complaint (DE 73). McMaster v. United States, 177 F. 3d

936, 940 (11th Cir. 1999). The Court notes that the Eleventh Circuit requires that pro se pleadings be construed liberally. E.g. Loren, 309 F.3d at 1301; Brown v. Sikes, 212 F.3d 1205, 1209 (11th Cir. 2000). The pleadings of a pro se plaintiff, nevertheless, must comply with the jurisdictional and procedural requirements of this Court. See Taylor v. Appleton, 30 F.3d 1365, 1366 (11th Cir. 1994) (jurisdiction); Lowe v. Hart, 157 F.R.D. 550, 553 (M.D. Fla. 1994) (procedure).

A. Jurisdiction To Enjoin Or Modify Judge Ferguson's Orders

"Count IX" of Kilcullen's Amended Complaint (DE 73) "requests injunctive relief or whatever relief this Court deems just or equitable, from court orders closing 97-CIV-7027 & 97-CIV-3765 and granting previous defendants, USA/USCS and EG&G Dynatrend, Inc., Tax for Costs." This Court does not have jurisdiction to review, modify or enjoin a final order or decision of another judge in the Southern District of Florida; that is the role of the United States Court of Appeals for the Eleventh Cirsuit. See 28 U.S.C. s 1291 (2002). Accordingly, "Count *X" must be dismissed.

B. Standing

Standing is a threshold issue of jurisdiction. Warth v. Seldin 422 U.S. 490, 498-99 (1975). As stated by the United States Supreme Court:

> In its constitutional dimension, standing imports a justiciability: whether the plaintiff has made out a "Case or controversy: between himself and the defendant within the meaning of Art. III [of the United States Constitution]. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of the justiciability, the standing question is whether the plaintiff has alleged such a personal stake in the outsome of the controversy as to warrant his invocation of federal-court jurisdiction and to justify the court's remedial powers on his behalf.

> The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining part, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered some threatened or actual injury resulting from the putatively illegal action.

Id. at 498-99.

A corporation is a legal entity and may, through legal counsel, sue and be sued. An officer or shareholder may not pro se represent a corporation. See Nat'l Indep. Theater Exhibitors, Inc. v. Buena Vista Dist. Co., 748 F.2d 1381, 1385 (11th Cir, 1985). Palazzo v. Gulf Oil Corp., 764 F.2d 602 (11th Cir. 1985). By prior Order (DE 68), the Court again advised Kilcullen of this rule of law and required that he "must establish standing for any action brought in his own name." Similarly, a non-attorney shareholder may not appear pro se in a derivative action brought on behalf of a corporation pursuant to Fed. R. Civ. P. 23.1. See First Hartford Corp. Pension Plan and Trust v. United States, 194 F.3d 1279, 1291-92 (Fed. Cir. 1999).

Kilcullen, in his Amended Complaint (DE 73), asserts standing based on two theories - (1) he is the "alter ego" of SkyKnight, see pp 9-21, and (2) for injuries he suffered in his personal capacity. See pp 23. Kilcullen's first theory is unavailing as, under applicable Florida law, "when a person chooses the privilege of doing business as a corporation, even where he is the sole shareholder, he forfeits his right to claim that he is the alter ego of the corporation." See In re Woolum, 279 B.R. 865, 870 (Bankr. M.D. Fla. 2002); see also Unichem Mfg. Co., Inc. v. Witco Chemical Corp., 522 So. 2d 98, 98 (Fla. 3d Dist. Ct. App. 1988); Resorts Int'l, Inc. v. Charter Air Ctr., Inc., 503 So. 2d 1293, 1295-96 n.l (Fla. 3d Dist. Ct. App. 1987). Accordingly, Kilcullen only has standing if he was injured in his personal capacity.

(1) State Law Claims

To determine whether a claim by a shareholder is derivative or brought in his individual capacity the Court must look to the body of the complaint and the gravamen of the injuries asserted. See Gill v. Three Dimension Sys., Inc., 87 F. Supp. 2d 1278, 1286 (M.D. Fla. 2000) (citing Alario v. Miller, 354 So. 2d 925, 926 (Fla. 2d Dist. Ct. App. 1978)); Hill v. Brady; 737 So. 2d 1243, 1244 (Fla. 5th Dist Ct. App. 1999). A derivative claim is one in which a shareholder seeks to enforce a right of action existing in a corporation - i.e. the injury sustained is the same as that sustained by any shareholder of the corporation. Gill, 87 F. Supp. 2d at 1286 (citing Leppert v. Lakebreeze Homeowners Assoc., 500 So. 2d 250, 252 (Fla. 1st Dist. Ct. App. 1986)).

In the instant matter, it is undisputed that it was Skyknight, not Kilcullen individually, which purchased, possessed and resold the aircraft and it was SkyKnight, not Kilcullen individually, which was a party to the two cases before Judge Ferguson. As a result, whatever injury stemmed from the seizure of the aircraft or the alleged discovery violations in the earlier cases, whether or not legally compensable as damages, were borne by SkyKnight and not Kilcullen individually. Claims based on these injuries, therefore, are derivative and Kilcullen lacks standing to pursue these claims in his individual capacity. See Alario, 354 So. 2d at 926; see generally Palafrugell Holdings, Inc. v Cassel, 825 So. 2d 937, 940 (Fla. 3d Dist. Ct. App. 2001) noting that "[t]he money no longer belonged to the investors individually after they deposited it into the [corporation's] account and received stock certificates. Although the investors were indirectly injured, loss of the money was a direct and primary injury to [the corporation].") Moreover, as noted above, a derivative claim cannot be pursued pro se. See First Hartford Corp. Pension Plan & Trust, 194 F. 3d at 1291-92.

All of Kilcullen's state law and common law claims rely on the injuries allegedly suffered by SkyKnight arising out of the purchase and subsequent investigation of the purchase of

the aircraft. Accordingly these claim must be dismissed. As noted above, the Amended Complaint imbeds other claims within the labeled "Counts", therefore, it is not possible for the Court to specify which Counts must be dismissed. This reasoning, however, extinguishes any case of action based on the allegations of the Amended Complaint (DE 73) except those seeking relief under the federal and Florida RICO statutes and for violations of the Fourth and Fifth Amendments.

(2) RICO Claims

Initially, the Court notes that Florida's RICO statutes, Fla. Stat. chs. 7721103, 895.05, have been interpreted using federal case law. See All Care Nursing Serv. V. High Tech Staffing, 135 F.3d 740, 745 (11th Cir. 1998); RLS Bus. Ventures, Inc. v Second Chance Wholesale, Inc., 784 So. 2d 1194, 1196 n.2 (Fla. 2d Dist. Ct. App 2001).

Under the federal RICO statute, 18 U.S.C ss 1961 et seq., a person whose injuries result merely from the defendant's unlawful acts towards a third party lacks standing. See Maiz v. Virani, 253 F.3d 641, 654 (11th Cir. 2001) (citing Bivens Gardens Office Bldg., Inc. v Barnett Banks of Fla., Inc., 140 F.3d 898, 906 (11th Cir. 1998) (hereinafter "Bivins Gardens II"). A shareholder, therefore, does not have standing for injuries visited on a corporation which was the target of a RICO violation. Id. at 654-55 (citing Bivens Gardens II, 140 F.3d at 906). A shareholder may, however, have standing in a RICO action in his/her own right if the shareholder can show that s/he was also the target of a RICO violation. Id. at 655. To establish that the shareholder individually was a target and to satisfy the principle underlying the RICO standing doctrine, Kilcullen must show that he will not be able to obtain a "double recovery" - i.e. that he will not be able to collect damages for the same violation in his capacity as n individual and in his capacity as a corporate shareholder. Id. at 656.

In Maiz, the individual plaintiffs were able to show standing apart from that of their corporations because the RICO violations were aimed at them as individuals before the

corporations were established and additional RICO violations targeted at the individual plaintiffs occurred after formation of the corporations. Id. at 655-57. In Bivens Gardens II, the plaintiffs asserted standing in their individual capacities as shareholder, a limited partner and creditor. The Eleventh Circuit held that "the test for RICO standing is whether the alleged injury was directly caused by the RICO violation", rejected the Second Circuit's looser RICO standing test of "reasonably foreseeable" harm and affirmed summary judgment because the plaintiffs lacked RICO standing in their individual capacities. Bivens Gardens II, 140 F.3d at 908.

In the instant case, Kilcullen lists his RICO injuiries as: (1) loss of $750,000 loaned to Skyknight to purchase the aircraft, (2) loss of money spent in pursuing SkyKnight's litigations, (3) loss of SkyKnight's profits when it ceased operation in 1997, (4) loss of other future profits from Skyknight and unspecified other business ventures, (5) extreme emotional distress resulting from his being the subject of a criminal investigation, the seizure of the aircraft, the threat of suit by PATCO (SkyKnight's buyer for the aircraft in July 1997), and the loss of money already noted and (6) "[l]oss of family well-being from afore mentioned distress." DE79, Kilcullen's Amended RICO Case Statement Per Local Rule 12.1, pp. 16-17. While the Court is not unsympathetic to the costs and stress resulting from being involved in a criminal investigation and civil litigation, these injuries are not direct to Kilcullen individually.[8] Monies spent by and on behalf of SkyKnight are direct losses only to SkyKnight. See Bivens Gardens II, 140 F.3d at 908. While SkyKnight and Kilcullen in

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[8] The only exception is Kilcullen's assertion that he suffered emotional harm as the subject of a criminal investigation. Emotional harm is not a compensable RICO injury and thus this exception does not foreclose dismissal of Kilcullen's claim. Grogan v. Platt, 835 F.2d 844, 847 (11th Cir. 1988).

a derivative action have standing to bring these claims,[9] allowing Kilcullen individually to bring these claims would impermissibly risk "double recovery" Maiz, 253 F.3d at 641.

Accordingly; Kilcullen's federal and state RICO claims must be dismissed for lack of standing.

(3) Civil Rights Claims

It is well established that a shareholder, even a sole corporate shareholder, does not have standing to maintain an action for civil rights violations causing injury to a corporation. See, e.g., Potthoff v. Morin, 245 F.3d 710, 717 (8th Cir. 2001); Flynn v. Merrick, 881 F.2d 446, 450 (7th Cir. 1989); E.A. Gregory v. Mitchell, 634 F.2d 199, 202 (5th Cir. 1981).[10] As noted above, Kilcullen's alleged injuries are those suffered by SkyKnight, a corporation, thus he does not have standing to pursue a civil rights claim based upon them.

C. Conclusion

Kilcullen's failure to establish standing for any of the causes of action included in his Amended Complaint (DE 73) absents this Court of jurisdiction to consider the merits of the above-styled cause. The Defendants' Motions to Dismiss (DE Nos. 77, 78, 80), therefore, must be granted.

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Though SkyKnight and Kilcullen in a derivative action would have RICO standing, the Court does not hold, or even suggest, that such a claim would succeed on the merits or even survive a motion to dismiss.

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The Court notes that decisions of the Fifth Circuit prior to September 30, 1981 have been adopted by the Eleventh Circuit as binding. Stein v. Reynolds Secs., Inc., 667 F. 2d 33, 34 (11th Cir. 1982).

III. Statute of Limitations

The expiration of the statute of limitations also blocks further consideration by the Court. If Kilcullen had alleged facts sufficient to establish standing, therefore, as discussed below with one exception the Amended Complaint must nevertheless be dismissed as time barred.

The appropriate statutes of limitations to apply to each of the state and common law causes of action listed in Kilcullen's Amended Complaint (DE 73) are set forth in Florida Statutes s 95.11. Section 95.11 provides that any action for fraud, taking or detaining property, negligence or any intentional tort must be brought within four years of the discovery of an injury resulting therefrom. Fla. Stat. ch. 95.11(3) (2003). Under applicable Florida law, a person need not know with legal certainty that a wrong has been committed to begin the running of the statute of limitations but rather the person need only have "notice of a possible invasion of their legal rights." Senger Bros. Nursery, Inc. v. E.I.Dupont du Nemours & Co., 184 F.R.D. 674, 684 (M.D. Fla. 1999) (citing University of Miami v. Bogorff, 583 So. 2d 1000, 1004 Fla. 1991) and Doe v. Cutter Biological, 813 F. Supp. 1547, 1555 (M.D. Fla. 1993), aff'd, 16 F.3d 1231 (11th Cir. 1994)). Kilcullen, like any reasonable individual, was aware of the alleged wrongs against him at the time the aircraft was seized on July 15, 1997. Kilcullen demonstrated his awareness of the possible invasion of his legal rights by bringing suit against the United States, the USCS and the EG&G Defendants later that same year. See 97-7027-CIV-FERGUSON, 97-3765-CIV-FERGUSON. More that four years passed between the date the aircraft was seized (July 15, 1997) and the date the original Complaint (DE1) in the above-styled cause was filed (July 15, 2002). Accordingly, these claims are time barred.

Similarly, Kilcullen's civil rights claims are time barred. The statute of limitations applied to civil rights claims is that applied to state claims for personal injury. See Kelly v. Serna, 87 F.3d 1235, 1238 (11th Cir. 1996) (citing Wilson v. Garcia,

471 U.S. 261 (1985)). As previously noted, under Florida law personal injury actions, whether intentional or negligent are subject to a four year statute of limitations. Fla. Stat. ch. 95.11(3). Thus Kilcullen's civil rights claims are time barred.

The statute of limitations for federal civil RICO claims is also four years. See McCaleb v. A.O. Smith Corp., 200 F.3d 747, 751 (11th Cir. 2000) (citing Klehr v. A.O. Smith Corp., 521 U.S. 179, 183 (1997)). The statute of limitations for a federal civil RICO claim begins to run when a plaintiff discovered, or reasonable should have discovered, that s/he is entitled to civil RICO damages for his/her injury. Id. More specifically, the time period begins to run when plaintiff discovered, or reasonably should have discovered, "both the existence and source of his injury, and that the injury is part of a pattern." Id. (quoting Bivens Gardens Office Bldg., Inc. v. Barnett Bank, Inc., 906 F.2d 1546, 1554-55 (11th Cir. 1990)).

Kilcullen had notice of his alleged injuries, its source and the existence of an alleged pattern on July 15, 1997 - the date of the seizure of the aircraft. On that date, he knew of the earlier misrepresentations by the EG&G Defendants regarding the aircraft's value and knew that the Federal Defendants were investigation the events leading up to the seizure. This is the core of the factual allegations upon which the federal civil RIO claim relies, thus, Kilcullen must have had notice of the injury, its source and the alleged pattern which according to the Amended Complaint ties the EG&G Defendants, the Federal Defendants and eventually the Butler Defendants together. Similarly, in McCaleb the Eleventh Circuit held that knowledge of a series of misrepresentations leading up to the discovery of an injury makes the date of the injury the day upon which the statute of limitations for a civil RICO claim begins to run. 200 F.3d at 751. It is immaterial whether Kilcullen had knowledge of the Butler letter on July 15, 1997, because, according to the facts alleged in the Amended Complaint, when the aircraft was seized he reasonably should have known of the RICO pattern based on the actions of the EG&G Defendants and the Federal Defendants alone. Moreover, the litigation-related acts which

comprise the remainder of the Amended Complaint's factual allegations cannot serve as predicate acts for a ivil RICO claim, see McMurtry v. Brasfield, 654 F. Supp. 1222, 1225-56 (E.D. Va. 1987) (citations omitted), and thus do not prolong the statute of limitations. Kilcullen's federal civil RICO claim is time barred.

Finally, the Court notes that Florida's civil RICO statute provides a five year limitations period. Fla. Stat. ch. 772.17 (2003). Kilcullen filed his original Complaint (DE 1) on the last day of the limitations period. Fla. Stat. ch. 772.17 (2003). Kilcullen filed his original Complaint (DE 1) on the last day of the limitations period. See McMillen v. Hamilton, 48 So. 2d 162, 163-64 (Fla. 1950) (holding that the statute of limitations period begins the day after the day the injury is doscovered). Assuming Kilcullen had standing to bring this claim, which as discussed above Kilcullen does not, it would not be time barred.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. Defendants, Roy Butler, Sr., Roy Butler, Jr., and Patrick Holmes' Motion To Dismiss Plaintiff's Amended Complaint With Prejudice And Motion To Strike Demand For Punitive Damages (DE 77), Defendants, EG&G, Inc., EG&G Technical Services, Inc., George Melton, Jerry Hawkins and John Dent's Motion To Dismiss Plaintiff's Amended Complaint For Monetary Damages And Injunctive Relief With Prejudice and Motion To Strike Demand For Punitive Damages (DE 78) and Defendants, Guy Lewis, Terrence Thompson, Laurie Rucoba, Howard Weintraub, Michael Consavage, John Devaney and Michael Palmer's Second Motion To Dismiss For Failure To State A Claim (DE 80) be and the same are hereby GRANTED;

2. Brian Kilcullen's Amended Complaint For Monetary Damages And Injunctive Relief (DE 73) is DISMISSED with prejudice; and

3. To the extent not otherwise disposed of herein, all pending Motions are hereby DENIED as moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 19th day of March, 2003.

"s/WILLIAM J. ZLOCH"
WILLIAM J. ZLOCH
Chief United States District Judge

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Filed by ____ D.C.
March 19, 2003
illegible
Clerk of the Court
S.D. of Fla. Ft. Laud.